

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 360 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HIRABEN WD/O.PRAHLADBHAI JIVABHAI

Versus

ASHVINKUM MAHASHANKLER THAKKAR  
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Appearance:

MR SR PATEL FOR MR AJ PATEL for Petitioners  
MR MC SHAH for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 19/08/98

ORAL JUDGEMENT

Heard Mr S.R.Patel for the petitioners and Mr  
M.C. Shah for the respondents. The respondents herein

filed Regular Civil Suit No.110 of 1976 in the Court of the learned Civil Judge (Junior Division) at Kheda for the recovery of the suit house bearing city survey no.835 situated in the area of Dudhi Chakla in Mehemedabad. It was the case of the respondent no.1 that his grandfather had let out the premises to the petitioner on the monthly rent of Rs.7/-. The relationship between the parties was created out of a rent note signed by the grandfather of the respondents and the petitioner. It was stated in the suit that the petitioner was in arrears of rent. There were other grounds also such as that the respondents wanted to repair the house and wanted the same for personal use.

2 The petitioner filed a written statement wherein he denied the ownership of the respondents over the suit house. He contended that he was never tenant of the suit house and hence there was no question of terminating the tenancy on the ground of arrears of rent, if any. After going through the pleadings, the learned judge framed the necessary issues. Issue no.1 was whether the plaintiff proved that the suit house was of his ownership and that the ground floor thereof was let out to the defendant at Rs.7 per month. The second issue was whether the defendant was in arrears of rent from 1.5.1974 till the date of the suit. The first respondent entered into witness box and produced the original rent note executed on 2.6.1954 at exh.25. In his cross-examination existence or execution of the rent note is nowhere disputed. Thereafter there are two pro-notes executed between the parties in the year 1970 and 1973 wherein the petitioner had agreed to pay certain amounts from time to time. It was the case of the respondent that the said amount agreed was towards the arrears of rent. Again, execution of rent note and existence of pro-notes was not disputed. The first respondent could not produce any rent receipts but he relied upon the entries in the dairies which recorded receipt of some payment towards rent from time to time. Though the petitioner contended that he had purchased the suit house, he did not produce any document of such purchase. The respondent had also produced the notice to quit which had called upon the petitioner to pay the arrears of rent and which were not so paid. In view of the aforesaid material on record, the learned judge answered the first issue in the affirmative that the respondents had proved that the suit house was of their ownership and that it was let out at the rate of Rs.7 per month which was the rent amount recorded in the rent note. The learned judge relied upon the judgement of Division Bench of this Court reported in 18 GLR 140 and held that since the petitioner was

disputing the relationship of landlord and tenant, the respondents were held as entitled to maintain the suit under the provisions of the Rent Act to recover the possession. Notice to quit had been served on 15.8.1976. It also came on record that the arrears of rent were not paid and that they were not paid for a period of more than six months. In the circumstances, the learned judge held that the provisions of Section 12(3)(a) of the Bombay Rent Act were satisfied and decreed the suit for ejectment.

3 Being aggrieved by that judgement and order an appeal was filed to the court of the Assistant Judge, Kheda, at Nadiad, being Civil Appeal No.55 of 1981 and in view of the aforesaid material on record, after framing the necessary points for consideration, the learned judge dismissed the appeal.

4 Being aggrieved by both those judgements and orders, this petition has been filed and the same has been admitted on 11th March 1983 with ad interim relief.

5 Mr Patel has taken me through the record of the proceeding. He has contended from the material on record that the respondents had failed to prove that they owned the house or that the petitioner was in arrears. In this behalf, however, Mr Patel could not point out anything from the cross-examination of respondent no.1 which would damage the testimony given by respondent no.1. Respondent no.1 having produced the rent note executed between the parties, it was expected of the petitioner to dispute the authenticity thereof by taking a specific plea in the written statement or by cross-examining respondent no.1 when he was in the witness box for that specific purpose. He has done neither. Nor has he produced any documentary evidence to show that he had purchased the very house. It therefore becomes only the word of the petitioner against the rent note, the execution of which has come to be proved. With respect to the pro-notes also, it cannot be said, in any event, that they are unreliable. Again, with respect to them the signatures are not disputed. No doubt, it is true that the respondent no.1 relied upon the entries in his diary to show how the rent was received and there were no specific rent notes issued from time to time. But that cannot lead to an inference that there was no landlord-tenant relationship between the parties. Ultimately, the preponderance of evidence has to be seen and which has been done by both the courts below.

6 Mr Patel for the petitioner has also relied upon

the judgement of this court in the case of KHIMJI BHIMJI V. TARABEN LALJI reported in 23 1982(2) GLR 114 to contend that the notice of demand must be specific. I have read the notice of demand and it cannot be said that the said notice is not a specific one raising the demand. In the circumstances, there is no error of law or otherwise in the orders passed by the courts below. Hence, this revision is rejected. Rule is discharged with no order as to costs. Interim relief is vacated.

7 Mr Patel for the petitioner requests that the decree may not be executed for some more time so that the petitioner can have time to make alternative arrangement. He seeks time for one year. Mr Shah opposes the grant of such a long time. In the facts and circumstances of the case, it is desirable that the petitioner is given some appropriate time. The decree which is confirmed will not be executed until 15.5.1999. That is because, by that time examinations of school children, if any, will also be over. The above extension is on the condition that the petitioners will file a usual undertaking before this Court within four weeks i.e. by 15.9.1998 wherein they will state that (i) they will peacefully hand over the possession the premises to the respondents at the end of period given to them; (ii) they will not create any third party rights nor will they induct anybody into these premises and (iii) they will continue to comply with all their obligations as occupants.

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